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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,926	12/23/2004	Makoto Ishikawa	1422-0655PUS1	7260
2292 7590 09/04/2007 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER KUGEL, TIMOTHY J	
			ART UNIT 1712	PAPER NUMBER
			NOTIFICATION DATE 09/04/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/518,926

Applicant(s)

ISHIKAWA ET AL.

Examiner

Timothy J. Kugel

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-10 are pending as amended on 12 July 2007.
2. The text of those sections of Title 35, US Code not included in this action can be found in a prior Office action.

Response to Amendment and Arguments

3. Applicant's amendment to independent claim 1, filed 12 July 2007, specifically amending the claim to require sucrose acetate isobutyrate as the emulsifying agent, overcomes the following:

The rejection of claims 1-6 under 35 USC 102(b) as being anticipated by US Patent 6,193,986 (Sakurada hereinafter) has been withdrawn.

4. Applicant's amendment to claims 4 and 6, filed 12 July 2007, specifically adding the article 'A' prior to the word 'foodstuff' overcomes the following:

The objection to claims 4 and 6 because informalities has been withdrawn.

5. Applicant's arguments, filed 12 July 2007, have been considered but are moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 7-10 are rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 7, the inclusion of a term within parentheses renders the claim indefinite because it is unclear whether the included term is part of the claimed invention.

Claim Rejections - 35 USC § 102

7. New claims 7-10 are rejected under 35 USC 102(b) as being anticipated by Sakurada.

Sakurada teaches a foodstuff (Column 1 Lines 5-13) comprising an oil-in-water emulsion (Column 1 Lines 14-33) wherein the oily phase comprises 0.5 to 50% of an emulsifier (Column 6 Lines 16-18)—which are surfactants having an HLB of not higher than 10 and preferably not higher than 1 (Column 4 Lines 44-52) including hexaglycerol trioleate and sucrose fatty acid esters as exemplified in the instant specification alone of in combination (Column 4 Line 53 – Column 5 Line 31)—and an oily component—including arachidonic acid, eicosapentaenoic acid and docosahexaenoic acid (Column 5 Line 47 – Column 5 Line 15).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-6 are rejected under 35 USC § 103(a) as being unpatentable over Sakurada as applied to claims 7-10 above in view of International Patent Application Publication WO 01/58279 (Takahashi hereinafter). US Patent Application Publication 2003/0035859 is the US equivalent to Takahashi and all references herein are taken therefrom.

Sakurada teaches a foodstuff comprising an oil-in-water emulsion wherein the oily phase comprises 0.5 to 50% of an emulsifier—which are surfactants having an HLB of not higher than 10 and preferably not higher than 1 including hexaglycerol trioleate and sucrose fatty acid esters as exemplified in the instant specification alone or in combination—and an oily component—including arachidonic acid, eicosapentaenoic acid and docosahexaenoic acid as detailed above.

Sakurada does not disclose expressly the use of sucrose acetate butyrate as an emulsifying agent (¶0029).

Takahashi discloses that sucrose acetate isobutyrate is an equivalent emulsifying agent to the sucrose fatty acid esters taught by Sakurada.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include the sucrose acetate isobutyrate emulsifying agent of Takahashi

in the composition of Sakurada. The motivation to do so would have been Takahashi that sucrose acetate isobutyrate is a functional equivalent to sucrose fatty acid esters. Further, it has been held that it is *prima facie* obviousness to use a known material based on its suitability for its intended use (*Sinclair & Carroll Co. v. Interchemical Corp.*, 325 US 327, 65 USPQ 297 (1945), *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960) and *Ryco, Inc. v. Ag-Bag Corp.*, 857 F.2d 1418, 8 USPQ2d 1323 (Fed. Cir. 1988)).

Conclusion

10. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy J. Kugel whose telephone number is (571) 272-1460. The examiner can normally be reached 6:00 AM – 4:30 PM Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/TJK/
Patent Examiner, Art Unit 1712



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